LHC ENFORCEMENT & PROSECUTION POLICY

Lymington Harbour Commissioners, in exercise of the powers conferred by The Lymington Harbour Revision Order 2014, and of all other powers them enabling, is a Statutory Harbour Authority. As such it has a duty to regulate use of the harbour within its jurisdiction, and uses General Directions, Special Directions and national and international legislation (such as the International Regulations for the Prevention of Collisions at Sea) to regulate use of the harbour including vessel traffic.

General Directions set out the day to day rules that govern use of the harbour by persons or vessels. They are published and are available on the Lymington Harbour Commissioners website, on the Harbour Notice Board, or from the Harbour Office on request.

In addition, the Harbour Master (or his deputies) is able to give Special Directions to vessels or persons within harbour limits for the purposes set out in The Lymington Harbour Revision Order 2014. This includes directions of when and how vessels may enter or navigate within the harbour and where and how they may moor.

Special Directions are directions given by the Harbour Master (or his deputies) to deal with matters that are of immediate concern and will normally be an oral instruction to one or more users requiring immediate attention.

Persons who fail to comply with a general direction or special direction shall be guilty of an offence and liable on summary conviction in the Magistrates Court to a fine not exceeding Level 4 (up to £2,500) on the standard scale depending on the offence.

Principles of Enforcement

The Harbour Commissioners have statutory powers to regulate the conduct of vessels and persons within the harbour limits and the Harbour Master's jurisdiction. To assist in the management of marine operations, the preservation of public safety, and the protection of the environment, enforcement action will sometimes be necessary.

It is recognised that most harbour users will seek to comply with the law and local practice. The Harbour Commissioners will, where possible, help users to meet their legal obligations without unnecessary expense while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

The Harbour Commissioners will provide information and advice in plain language on the rules that apply in the Lymington River and will disseminate these as widely as possible. Legal powers will be used proportionately and appropriately to safeguard and improve public safety and the environment. The safety of residents, harbour users and visitors is of primary importance, and will be the focus of any enforcement action.

The Harbour Commissioner's staff will consider dialog, education and persuasion in dealing with those who contravene General Directions. Where a criminal offence has been committed the further options

of cautioning or prosecuting the offender are available.

The Harbour Commissioners will minimise the costs of compliance for users by ensuring that any action taken will be proportionate to the risks. Where the law allows, the circumstances and the offender's attitude will be taken into account when considering a course of action.

The Harbour Commissioner's staff will carry out their duties in a fair, equitable and consistent manner. They will seek to be clear, open and helpful in their approach to enforcement.

The Commissioners will seek to target enforcement resources in areas of greatest need, and will be guided by their policies, aims and objectives. Regular liaison with other local enforcement agencies will take place, and joint working will be considered to resolve particular issues as they arise.

Enforcement Action

Enforcement action can take the form of:

- Verbal Warning – education by Harbour Staff should they observe a contravention of the Directions.
- Formal Caution – written warning from the Harbour Master or Operations Manager setting out the manner in which the Directions have been breached and the implications should the recipient re-offend.
- Prosecution in the local Magistrates Court.
- A combination of any of the above.

Consideration of Action

Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will be initiated when the offender's conduct has been such that that The Harbour Commissioners cannot impose an appropriate sanction and that the offence warrants the attention of the Magistrates.

The Harbour Commissioners are committed to assisting other enforcement agencies, including the police, to pursue their statutory duties. The Harbour Master will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

When investigating alleged offences Harbour Staff will always explain the purpose of the stop, visit or interview. Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this policy.

In addition to the Commissioner's internal policies, due regard will also be given to the Code for Crown Prosecutors. Legal advice will always be sought prior to taking a prosecution to establish that the case is 'sound'.

Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the action will be given.

Any investigation by Harbour Staff will be conducted pursuant to the Police & Criminal Evidence Act 1984 and the relevant Codes of Practice. Where applicable, best practice will be observed as set out in national guidelines issued by such bodies as the Department for Transport and/or the Maritime Coastguard Agency.

The Harbour Commissioners recognise that once a prosecution has been commenced, control of the matter is ceded to the Courts and Criminal Justice System.

Enforcement Factors

In considering the appropriate enforcement action, the Harbour Master will take into account the following:

- The seriousness of the offence.
- The risk of harm to the public and others.
- The public interest.
- The explanation of the offender.
- Whether the offender has obstructed officers in the pursuance of their functions.
- Whether the matter is a recurrence.
- Whether there have been any other contraventions of the General Directions or legislation by the offender.
- The willingness of the offender to prevent a recurrence of the incident.
- The action taken by the offender to mitigate damage or loss to others.
- The availability of witnesses.
- The sufficiency of evidence.

Prosecution

Prosecution, as an ultimate sanction will be considered in any of the following circumstances:

- Where the offence is a flagrant breach of the General Directions or legislation such that public safety or well- being is put at risk.
- Where the offence involves an obstruction of officers in the pursuance of their duties.
- Where the offence involves failure to comply with a warning.
- Where there is a history of similar offences.
- Where the offence involves a risk of damage to the environment.
- There are other public interest factors mitigating in favour of prosecution.

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